



DIVORCE AND MILITARY BENEFITS

Office of the Staff Judge Advocate, Luke AFB, AZ, (623) 856-6901

This pamphlet provides information regarding former spouses of active duty or retired military members' rights to retirement pay, medical benefits, and commissary/AAFES privileges.

RETIREMENT PAY

In a divorce decree, a court may award the former spouse of a military member a portion of the member's retirement pay. If a court apportions retired pay between member and spouse, only "disposable retired pay" (DRP) may be divided. DRP includes the member's monthly retired pay minus certain deductions, such as income tax withholdings, Survivor Benefit Plan premiums, and if the member is entitled to disability pay, the product of the member's monthly retired pay multiplied by the percentage of his disability.

The exact portion or percentage of retired pay awarded to the former spouse depends upon the law of the state where the divorce decree was entered. Arizona courts will consider the length of marriage and the length of the member's time in Service. In Arizona, former spouses are entitled to **one-half of all retirement pay that accrued during the marriage. This is known as the community share.**

The following formula may be used to determine a former spouse's share of retired pay in Arizona and other community property states.

$$spouse's \% = \left(\frac{\text{number of years the marriage overlapped with military service}}{\text{years of service}} \right) * 1 / 2 * 100\%$$

EXAMPLE: MSgt A served for 20 years on active duty and then retired. During his service he was married to Mrs. A for 8 years. The community share is 8 years / 20 years, or 40%. When they divorce, Mrs. A will get one half of the community share, or 20% of the retirement.

EXAMPLE: Major and Mrs. B have been married for 24 years. Major B retired after 22 years of service. In other words, they were married during his whole military career. Therefore, 100% of Major B's retirement is community property. If they divorce, Mrs. B is entitled to one half of the community property share.

WHEN CAN A FORMER SPOUSE COLLECT HIS OR HER SHARE OF THE RETIREMENT PAY?

A former spouse becomes eligible to collect retirement pay upon the retirement of the military member.

TERMINATION OF PAYMENTS

If the member dies, his retirement payments cease, as does the former spouse's share. Payments do not terminate if the former spouse remarries. A former spouse may request a divorce court to include a requirement that the member purchase and continue making payments for survivor benefits in the former spouse's name. Such a court order must be filed with the Defense Finance and Accounting Service (DFAS) within one year of the date of the divorce. The mailing address is:

Defense Finance and Accounting Service
U.S. Military Retirement Pay
P.O. Box 7130
London, KY 40742-7130
FAX: 1-800-469-6559

DIRECT PAYMENTS

DFAS can automatically deduct a former spouse's share from the member's payment each month and send it directly to the former spouse. This requires the member and former spouse to have been married for at least 10 years during the member's retirement creditable service. Such a direct payment is limited to 50% of the member's disposable retired pay. Any award over that must be paid by the member to the former spouse. The 10 year limit only restricts to whom direct payments can be made. Remember, a former spouse may be entitled to part of the retired pay even if married to the member for less than 10 years; DFAS will not, however, authorize direct payments in those cases.

To obtain direct payment, a former spouse must submit a certified copy of the divorce decree along with a completed application form, DD Form 2293, to DFAS. Instructions, including designated agent names and addresses are found on the back of the DD Form 2293. DFAS is the designated agent for all uniformed military services. DD Form 2293 and instructions can be downloaded at www.dfas.mil; search for DD Form 2293. Former spouses may have their allotment directly deposited by submitting DFAS-CL Form 1059, available at www.dfas.mil; search for Form 1059.

For further information, you may contact DFAS at the below address and phone numbers.

Defense Finance and Accounting Service
U.S. Military Retirement Pay
P.O. Box 7130
London, KY 40742-7130

Toll Free (800) 321-1080
Commercial (216) 552-5955
Fax (800) 469-6559

Annuitants

Defense Finance and Accounting Service
U.S. Military Annuitant Pay
P.O. Box 7131
London, KY 40742-7130

Toll Free (800) 321-1080
Commercial (216) 552-5955
Fax (800) 982-8459

COMMISSARY AND EXCHANGE PRIVILEGES

A former spouse remains entitled to commissary and exchange privileges only if the spouse has not remarried and the “20/20/20” rule is met. The “20/20/20” rule requires that:

- 1) The former spouse and military member were married for at least 20 years;
- 2) The member performed at least 20 years of retirement creditable service; and
- 3) At least 20 years of the marriage coincide with at least 20 years of the retirement creditable service. (20 years of retirement creditable service and marriage overlap).

MEDICAL BENEFITS

A former spouse is entitled to retain full medical benefits if the former spouse remains unmarried, the “20/20/20” rule is met, and the former spouse is not eligible for an employer-sponsored health plan.

If the former spouse and service member were divorced **before 1 April 1985**, a “20/20/15” rule applies, rather than the “20/20/20” rule. That is, the overlap between the marriage and creditable service must only be 15 years for the former spouse to retain full medical benefits. The “20/20/15” rule requires that:

- 1) The former spouse and military member were married for at least 20 years;
- 2) The member performed at least 20 years of retirement creditable service; and
- 3) At least 20 years of the marriage coincide with at least 15 years of the retirement creditable service. (15 years of retirement creditable service and marriage overlap).

Former spouses divorced **after 29 September 1988** who satisfy the 20/20/15 rule are entitled to medical benefits for **1 year** from the date of divorce.

WHO TO CONTACT TO ASK FOR ASSISTANCE

If you have further questions regarding eligibility for military benefits, contact the legal office at (623) 856-6901.

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